

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON TAXATION**

#### **SUBCOMMITTEE ON SALES TAX**

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**Call to Order:** By **CHAIRMAN BOB DEPRATU**, on February 18, 1999 at 10:08 A.M., in Room 413/415 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Bob DePratu, Chairman (R)  
Sen. Bill Glaser (R)  
Sen. Barry "Spook" Stang (D)

**Members Excused:** None

**Members Absent:** None

**Others Present:** Terry Johnson, Legislative Fiscal Division  
Gordon Morris, Montana Association of Counties  
Mary Bryson, Department of Revenue  
Jeff Miller, Department of Revenue  
Jerry Leonard, Department of Revenue  
Sen. Alvin Ellis, Jr.

**Staff Present:** Sandy Barnes, Committee Secretary  
Lee Heiman, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 135, SB 143, SB 157

#### **DISCUSSION ON SB 143**

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**SEN. DEPRATU** asked the Department if they had had a chance to pull together any of the information requested the day before, and **Mr. Heiman** said that he was ready to backtrack what he had said regarding page 7, line 9. He said that in rereading this text, it became clear that it is a nexus type of a provision

where we are trying to provide nexus if the sale uses benefits from state banking, financing, debt collection, telecommunication or marketing activities or installation, servicing or repair facilities. He said that if someone sells a product and then says they will deduct three equal payments out of your bank account, and they are using in-state commercial banking, this tries to provide nexus to that seller. He said the other part is where they talk about authorized installation, servicing or repair facilities, where the proper warranty work can be done in certain cities, they are trying to provide nexus even though that representative in Kalispell may be a no-brand warranty shop. He said this is not proven and it is not guaranteed to work, but it is innovative.

**Jeff Miller, Department of Revenue**, said that the Department is still working on the language requested from the Department.

**SEN. DEPRATU** asked if that included the used equipment sales, and **Mr. Miller** said that was part of what they were working on. **Mr. Miller** did provide a Sales and Use Tax Survey by States, **EXHIBIT (tas40b01)**, and a Summary of the National Tax Association Communications and Electronic Commerce Tax Project, **EXHIBIT (tas40b02)**, which provides some of the information requested by the committee.

**SEN. STANG** asked if "E" refers to exempt on Exhibit 1, with the number being the rate, and a zero means that they are not exempt, but they are taxed at zero rate, and **Mr. Leonard** said that at zero, it is not taxed, but "E" means it is just exempt.

**Section 37, Nontaxability -- use of property leasing**, no changes.

**Section 38, Credit -- out of state taxes**, no changes.

**Sections 39, Seller's permit; Section 40, Permit application -- requirements -- place of business -- form; Section 41, Revocation or suspension of permit -- hearing -- notice -- appeal:**

**SEN. DEPRATU** said that Sections 39, 40 and 41 all go together, and he asked about (c) of Section 40 and whether it applies to art fairs, mobile businesses, and **Mr. Miller** said that was correct.

**SEN. DEPRATU** asked how a person would apply for a permit, whether it could be done locally or at the county seat, and **Ms. Bryson** said they would probably have to get it at the county seat. She said the Department has a presence in every county.

**SEN. STANG** asked how long it would take to get a permit, and **Mr. Miller** said he thought the permit would be a single-page form, with name, location, a federal identification number, who is the responsible and accountable party for collecting and remitting, and could be done "on the spot." **Mr. Morris** referred the committee to Section 29, page 18, (3), which gives the Department rule-making authority, and he felt that the Department would consider all of these issues in developing the rules. **SEN. STANG** said he just wanted to assure that this will be a quick and easy process. **SEN. DEPRATU** mentioned also that not everyone would have a federal ID number, in which case they could use their social security number.

**Mr. Morris** asked if there was a departmental permit requirement on the local option tax, and **Ms. Bryson** said there was not, that the Department does nothing with regard to the resort tax.

**Mr. Miller** said that in concept, this provides a good framework. On page 18, line 4, Section 3, the Department is required to put rules in place right away to allow this process to happen, even before the tax comes up. The framework of appeal and redress, and the process of due process is well laid out. He said he did not anticipate that the application process and seller permit form will be more than a page long and merely would capture the relevant information.

**SEN. STANG** asked, in the case of the weekend flea market, whether the sponsors of the flea market are responsible for notifying participants that they need a permit. **Mr. Miller** said other states have required the sponsor to be responsible for that, but another approach would be that the Department would be tuned in to those kinds of activities and make provisions. **SEN. DEPRATU** said this can be a situation where they really resent the whole process. He said it is a fine line and care needs to be taken that the whole situation does not become onerous. **Mr. Miller** said that if this could be specified in the statute, it is generally better received than if the Department has to make a rule, and **SEN. DEPRATU** suggested that perhaps the committee should work up something that clarifies the situation.

**Motion:** **SEN. STANG** MOVED LANGUAGE BE INCLUDED THAT FOR ONE-TIME LOCAL EVENTS, THE SPONSOR IS RESPONSIBLE FOR PROVIDING A NOTIFICATION TO PARTICIPANTS THAT A PERMIT IS NECESSARY AND HOW THAT IS APPLIED FOR, AND THAT THE SPONSOR IS NOT RESPONSIBLE FOR ANY COLLECTION AND PAYMENT OF TAX. Motion passed 3-0.

**Mr. Morris** read a quote, "State laws differ in their precise definition of casual and usually define it in terms of the number of days during the year in which sales are made," and **SEN.**

**DEPRATU** suggested that 10 days would be a good definition. **Ms. Bryson** said that she thought that the persons being discussed here would be the person who goes from flea market to flea market during the course of the summer and would probably not be considered casual sales because that is their business, and that situation is defined elsewhere. **Mr. Johnson** said that happens locally on the corner of the local gas station, and these people are going across the state without being sponsored by anyone. **SEN. DEPRATU** said that these are sellers that should be permitted, but reiterated that the occasional garage sale would not be included in this. It was decided that **Mr. Miller** would check how other states who have a sales tax handle this situation.

**Section 42, Improper use of subject of purchase obtained with nontaxable transaction certificate -- penalty:**

**SEN. STANG** asked if he was correct in assuming that if he should rent-to-own a TV, the amount that is paid for rent, along with the purchase price is taxed, even though the rental charge probably includes interest, and **SEN. DEPRATU** said that was his understanding. **SEN. STANG** then asked if they were paying tax when they are renting it, and if so, are they paying the tax twice, which didn't seem fair. **Mr. Heiman** said that the catch line is "improper subject of purchase," and he wondered if this was an improper rental, which would mean there was no tax paid initially. **Ms. Bryson** said they would use the nontaxable transaction certificate to not pay tax on that transaction, and it would not apply to the rent-to-own situation.

**Section 43, Commingling nontaxable certificate goods:**

**SEN. DEPRATU** asked what fungible goods are, and **Mr. Heiman** said that refers to grain, money, or something where the goods are interchangeable; in other words, a dollar bill is the same as any other dollar bill, a bushel of oats is the same as any other bushel of oats.

**Section 44, Liability for payment of tax -- security for retailer without place of business -- penalty:**

**SEN. DEPRATU** asked if this is providing that the transient retailer may be required to provide adequate security, which would be a bond, and that concerned him with regard to flea markets. **Ms. Bryson** said that under Section 50, some

determination would have to be made of what that amount might be the Department would hold in security, so that could be part of the permitting process. If a vendor is going to come in for their permit, at the same time they would pay a bond for the estimated liability. **SEN. STANG** asked if that meant that everyone that has a permit would be required to have a bond. **Mr. Morris** pointed out that this refers to the transients, but **SEN. STANG** said that Section 50 refers to everybody, and that the Department could require that everybody that has a permit to have a bond. **SEN. GLASER** said that the word "may" lets the Department have the discretion. **Mr. Miller** said this is trying to provide a tool to deal with the "bad actors," and not intending to apply across the board. He said they would have to look at how other states handle this situation.

**SEN. DEPRATU** said that it was important to be able to go after the person who is floating through the state, but on the other hand, he said he wants to protect the local art fair and flea market people who are truly locals who are hobby-type businesses having to put up security bonds, and asked the Department to provide some clarification for that.

**Section 45, Interstate and intrastate carriers as retailers,** no changes.

**Section 46, Application for permission to report on accrual basis,** no changes.

**Section 47, Returns -- payment -- authority of department:**

**SEN. DEPRATU** asked what the minimum and maximum reporting period is, and **Mr. Miller** said that the framework seems to be setting up the presumption that it will be the 15th day of each month, so it is a monthly filing, and then there is the exception in subsection (2) that says that if that liability is less than \$100 per month, they can file on a quarterly basis. **SEN. DEPRATU** said that the cash flow for businesses would be helped if the date could be set at the 25th.

**Mr. Johnson** said he had a question on No. 1, where it talks about a separate return and wondered why a separate returns would be required if this was a business that had different locations in the state, and **Ms. Bryson** agreed that this wording would require them to do it separately. She said it may not be necessary to have this provision any longer because technology would make it possible to determine different locations for one corporate entity and perhaps the wording should be changed to allow for consolidated filings. **Mr. Heiman** said he thought this was set

this way so that it would be easier to determine points of distribution back to local entities.

**Mr. Johnson** then asked if there were any advantages to having the date coincide with withholding payments or anything like that, in the process of consolidating and streamlining these payments, and **Mr. Miller** said that he supposed there could be some advantages for some companies, and that it seems that it might be better to try and keep them together.

**SEN. DEPRATU** said that from the Department's standpoint that might be better, but from a business standpoint it is not. **Ms. Bryson** asked if it would be helpful for the committee to know what some of the due dates are for some of the other business taxes, and **SEN. DEPRATU** said that might be helpful. **Mr. Miller** said the Department would provide a schedule.

**SEN. DEPRATU** reiterated that the Department would provide, then, better wording for "multiple business," and a schedule for present tax due dates.

**SEN. DEPRATU** then asked what the maximum time was that a business could go before paying the taxes, and **SEN. GLASER** pointed out that it says quarterly, and **Mr. Johnson** asked how that was determined. **Mr. Miller** said that this would probably be approached with the presumption that everyone would be on a monthly basis initially until there is some experience that could provide a look back at what would be the actual taxes due, and then they could sort those quarterly payers out.

**Section 48, Credit for taxes paid on worthless accounts -- taxes paid if account collected,** no changes.

**Section 49, Vendor Allowance:**

**SEN. DEPRATU** asked if he was correct in that the businesses would be paid 1.5% or \$50 a month, whichever is less, for handling the paperwork for collecting the tax. **SEN. STANG** asked if this was standard, because he thought that it was usually set at like .5% without a minimum or maximum on it for other taxes. **Mr. Miller** said that that varies, and **SEN. DEPRATU** said he thought this was a pretty small amount, especially for large retail businesses. **Ms. Bryson** said that there was a study done that the Department is trying to get a copy of of the actual costs that vendors incur to collect sales tax that was done in Utah. She said that when the Department gets a copy, they would provide it to the committee.

There was some discussion about whether a percentage amount with no limit might be better to cover this, and **SEN. GLASER** pointed out that businesses in other states fund their sales tax expenses by having an advantage on the breakage, the half cents and pennies difference when rounded up. **Ms. Bryson** said that at some point volume would not make a difference, once the infrastructure has been established, and that is why there is usually a limitation placed upon that, but that the Department would take another look at that particular aspect of it.

**Section 50, Security -- limitations -- sale of security deposit at auction -- bond:**

**SEN. DEPRATU** reminded the Department that they were going to come up with some background on that and how they would approach rule-making regarding that issue so that it doesn't ruin the mom-and-pops but catches the professionals.

**Section 51, Examination of return -- adjustments -- delivery of notices and demands,** no changes.

**Section 52, Penalties and interest for violation:**

**SEN. STANG** asked whether the Department is set up by statute to handle appeals on the sales tax to the tax appeal board, or does that need to be changed to accommodate that, and **Ms. Bryson** said the Department would like to take a closer look at the notices and penalties and interest in that appeals section because that is probably inconsistent with legislation that the Department has in this session and they would want to be sure that this language is consistent with that.

**SEN. GLASER** said he had noticed that under the penalties and interest and violation section, a person who purposely and knowingly violates is penalized 5%, but for a person who violates without purpose and unknowingly, the penalty is higher. **Ms. Bryson** said that is another reason why the Department needs to make sure this is consistent with the standardized statutes.

**Section 53, Authority to collect delinquent taxes,** no changes.

**Section 54, Interest on deficiency -- penalty,** no changes.

**Section 55, Limitations:**

**SEN. DEPRATU** reiterated that the Department will be checking all these sections and will return a report to the committee.

**Section 56, Refunds -- interest -- limitations:**

**SEN. STANG** asked why this limitation was longer than the federal limit, which is three years, and wondered why Montana has a five-year limitation, and **Mr. Miller** said that it is historic and he did not know the reasoning behind it. He said that the Department would also take a look at the statute of limitations section and penalties and interest and appeals and bring back to the committee written amendments of what the Department thinks would make these synchronize as best as possible.

**Section 57, Administration -- rules, no changes.****Section 58, Revocation of corporate license -- hearing authorized -- appeal:**

**SEN. GLASER** asked how the individual would be handled, and **Ms. Bryson** suggested that perhaps their business license could be revoked. **SEN. DEPRATU** asked the Department to bring an amendment that would provide that.

**Section 59, Taxpayer quitting business -- liability of successor:**

**SEN. STANG** asked if 59 is saying that the new purchaser of a business has to withhold enough money to pay the sales tax from the contract until receipt that it is paid is received. **SEN. DEPRATU** said when a person buys a business, they do not want to buy that business's liabilities, and said he was uncomfortable with that. **SEN. ELLIS** pointed out that this is a provision which says that the buyer must protect himself against that liability when he purchases a business.

**SEN. DEPRATU** asked if there was any way the Department is going to give the successor a guarantee that there is nothing the previous owner is being audited for. **SEN. ELLIS** said he also had a problem with (4) which gives the Department six months. He said he felt that the buyer should be able to find out immediately what the status is of the previous taxpayer. **Ms. Bryson** asked if he felt that the six months were too long, and **SEN. ELLIS** said that when the buyer gives notice of the purchase, he should be able to find out from the Department whether the taxes are paid and when their last report was submitted and what they may still be liable for. **Ms. Bryson** said she understood the concern, and she said she suspected that this relates to audits that were being done.

**SEN. GLASER** asked why a new occupant of a business should assume the obligations of the previous owner, and **SEN. DEPRATU** said that



should not be the new owner's responsibility, that it should be the state's responsibility to worry about collecting from those people, and that they should not be able to shift that responsibility to an innocent third person. **Mr. Heiman** said that this type of a tax, looking at Section 60, is a personal debt of the business owner. He said when a business gets its seller's permit, there is a bonding provision and they are the responsible party. He said it seems like the entity that is operating the business, even when they sell the business, should continue to be responsible for the taxes that were not paid. There is no way for a new person coming in to be able to tell on the sales tax. He said that perhaps this should be reversed and make the previous owner responsible for that.

**Motion: SEN. STANG MOVED THAT NEW LANGUAGE BE DEVELOPED THAT WHEN A BUSINESS IS TRANSFERRED, THE SUCCESSOR IS NOT LIABLE FOR THE TAXES OF THE PREVIOUS OWNER.**

**Discussion:**

**SEN. ELLIS** asked if due caution language should be added or if a new owner should be totally absolved and the state be responsible. **SEN. DEPRATU** said it would seem to him that the state would have remedies. If the Department knows that the business has not paid their taxes for the last three months and they have not been able to collect it, it would seem that the state could apply a lien to that business so that in the sales transaction their funds would be taken out.

**SEN. GLASER** said that the person who has the original permit, when they decide to terminate that permit, they have a statutory obligation to inform the Department that they are shutting down and will relinquish their permit and pay off their debt. **Mr. Morris** suggested that (2) covers that.

**Vote: Motion carried 3-0.**

**Section 60, Tax as debt:**

**SEN. GLASER** said the language was wrong in that the debt is the responsibility of the estate of the deceased, and not the personal representative, and **SEN. ELLIS** said that if the personal representative disburses the assets without paying the taxes, that person is responsible. **Mr. Heiman** agreed that it is correct. **Mr. Miller** agreed that that person has the responsibility as well as the authority, and **Ms. Bryson** said the Department would look at that language again.

**SEN. DEPRATU** said, with regard to (3)(b), that he did not believe the employee should be held responsible unless he has done something fraudulent. **SEN. GLASER** said that the discussion on this matter two years ago determined that the employee may have authority, but is not responsible, and the committee agreed that is language they all had agreed upon. **Mr. Heiman** said he would find that language and see how it fits with this legislation.

**SEN. DEPRATU** said that the committee would close for today and start with Section 61, page 28, and finish up **SB 143** tomorrow.

**ADJOURNMENT**

Adjournment: 11:35 A.M.

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SEN. BOB DEPRATU, Chairman

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SANDY BARNES, Secretary

GD/SB

**EXHIBIT** (tas40bad)